IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.532 of 1993

1. Smt.Chanchal Upnishad Baxi)
2. Shri.Yati Upnishad Buxi)
both residents of Warardevi)
Road, Kaneri, Taluka Bhiwandi)
District Thane.) ...Petitioners
(orig.Appellants/
Plaintiffs)

versus

1. Shri.Narayanlal s/o.Krishnaji)
Joshi,)
2. Shri.Shahbuddin Sharafuddin)
Momin,)
3. Shri.Anthony Rafael, all of)
of them doing business at)
Municipal House No.217, Teli)
Pada, Buxi Compound, Agra road,)
Bhiwandi, District Thane.) ...Respondents
(orig.respondents/
Defendants)

Mr.Navin B. Shah, for Petitioners.

Ms.Leena Patil h/f. Mr.P.M.Pradhan, for Respondents

CORAM: R.M.S.Khandeparkar,J.

DATED: 1st October,2004.

ORAL JUDGEMENT

1. Heard the learned Advocates for the parties. Perused the records. The petitioners challenge the judgement and decree passed by the Trial Court on 13th November,1989 in R.C.S.no.445 of 1981 and confirmed by the Lower Appellate Court on 19th October,1992 in Civil Appeal no.106 of 1990, whereby the Respondents have been declared as tenants in respect of the premises in their respective possession and the petitioners are restrained by way of perpetual injunction from interfering with the Respondents' possession in respect of their respective premises or causing them any obstruction in the use of the approach road to their respective premises.

2. Few facts relevant for the decision are that the Respondents herein, claiming to be the lessees in respect of the premises in their respective possession, filed a suit for declaration in respect of their said status and further for permanent injunction for the relief that has been granted by the impugned order. The Respondent no.1 claimed to be a tenant in relation to the open

space admeasuring 22 ft X 12 ft. on monthly rent

of Rs.22/- and with advance payment of rent to the extent of Rs.3000/- in the year 1976 to the husband of the petitioner no.1. The respondent no.2 claimed to be a tenant in relation to the open plot admeasuring 30 ft. X. 30 ft. on monthly rent of Rs.30/- and having paid sum of Rs.1400/- as deposit in the year 1978 to the husband of the petitioner no.1. The respondent no.3 claimed to be a tenant in respect of the open land admeasuring 30 ft. X. 20 ft. alongwith the premises admeasuring 30 ft. X 10 ft. on monthly rent of Rs.40/-, on advance payment of Rs.2000/- to the husband of the petitioner no.1 in the year 1979. The respondent no.1 claims to have started the hotel business in the open space leased to him. The respondent no.2 claims to have started the business of waste papers shop and the respondent no.3 claims to have started his garage in the premises of one room and open space. It was their case that they had requisite licences for their respective business and they used to pay rent to the husband of petitioner no.1 till his death. It is also their case that they used to pay electricity charges to the husband of

the petitioner no.1. After the demise of husband of petitioner no.1, it is their case that rent was paid to the petitioners and further that in view of

friendly relationship between the respondent and husband of the petitioner no.1, they never insisted for issuance of receipt in relation to the rent paid by them. Since the petitioners tried to evict the respondents and tried to obstruct their access to their premises by erecting a compound wall, the respondents sought to initiate the action against the petitioner, and therefore, filed the present suit.

3. The petitioners on the other hand while denying the claim of the respondents and accusing them to be trespassers, the licence given to them having expired on the death of the husband of the petitioner no.1, raised the objection regarding maintainability of the suit on the ground of mis-joinder of causes of action as well as mis-joinder of parties, further contending that they were within their right to construct compound wall to their own plot.

4. The respondent no.3 examined himself and

one witness in support of respondents case, whereas the petitioner no.2 examined himself in support of their defence. Considering the evidence on record, the trial court held that the respondents had

proved that they are the tenants of the petitioner no.1 in respect of the suit premises and that they are in possession of the suit premises and therefore, the petitioners can not disturb their possession of the suit premises nor can obstruct their access to the suit premises, and thereby decreed the suit. The lower appellate court dismissed the appeal filed by the Petitioners.

5. While assailing the judgement passed by the Courts below, the learned advocate for the petitioners submitted that both the courts below though have arrived at concurrent finding on the point of status of the respondents in relation to the suit premises claimed by them as having been let out to them by the husband of the petitioner no.1, the said finding has been arrived at contrary to the materials on record as well as on total mis-reading of the evidence and the finding is, therefore, perverse and warrants interference in its writ jurisdiction. He further submitted that

the suit itself is not maintainable on account of mis-joinder of the causes of action as well as mis-joinder of parties and inspite of specific objection in that regard having been taken before the trial court as well as before the lower

appellate court, the appellate Court failed to address to the said issue and to consider the same while deciding the matter. Taking through the judgements of the Court below, he further submitted that bare analysis of the materials on record by the Courts below exfacie discloses that the respondents had neither produced any documentary evidence nor oral evidence in support of their claim regarding their leasehold rights in relation to the suit premises. Learned Advocate for the respondents on the other hand submitted that both the Courts have concurrently held that the petitioners are not aware as to under what conditions the respondents were inducted in the suit premises and considering the fact that the Petitioner no.1 did not enter the witness box and evidence was led only by the Petitioner no.2 who has no knowledge about the dealings in relation to the suit premises with the husband of petitioner no.1, have rightly believed the case put forth by

the respondents regarding their tenancy in regard to the suit premises, and therefore, findings do not warrant interference in writ jurisdiction. She has further submitted that mere non consideration of issue regarding mis-joinder of cause of action or mis-joinder of parties by itself would not be

the justification for interference in the impugned judgement which clearly shows the decision having arrived at on the basis of materials on record in relation to the claim put forth by the respondents and hence, the objection sought to be raised regarding non-maintainability, being of technical nature, once it does not affect the merits of the case, same should not be entertained to defeat the decree in favour of the respondents.

6. Perusal of the impugned judgements, obviously discloses that the trial court as well as the lower appellate court had totally forgotten the basic principle of law that the party who approaches the court seeking relief from the Court has to establish his case and mere weakness in the defence of the opponent in answering the case of the party approaching the Court, by itself cannot justify the grant of relief in favour of such

party. If the plaintiff establishes the case pleaded by him in the plaint, only there upon the onus would shift upon the defendant to prove the defence raised by him in the suit. In the absence of initial burden being discharged by the plaintiff, occasion to accuse the defendant of his failure to establish his defence

does not arise at all. However, analysis by the Courts below in relation to the evidence in case in hand apparently discloses that both the Courts have proceeded under the belief that it was for the petitioners/defendants to prove that the respondents were licensees in relation to the suit premises and not lessees and that their licence was terminated. It was the case of the respondents themselves that they were inducted in the suit premises as the lessees by the husband of the petitioner no.1, and therefore, it is necessary for the respondents to lead cogent evidence in support of their claim in that regard. Admittedly, apart from the oral testimony of the respondent no.3 claiming all the respondents to be in possession of respective areas of the suit premises, neither any documentary evidence was produced nor any oral testimony in support of the said claim was made

available in the matter in hand. One Mr.Dwarkadas Pragjimal Bhatia was examined as the witness who undoubtedly has stated that the respondents were occupying the premises on lease. However, he did not disclose the source of knowledge to him regarding the status of the respondents in the premises nor anything regarding terms and conditions on which the respondents are occupying

the premises of the petitioners. It is to be noted that once a party claims to be a tenant of the defendant, he impliedly admits the title of the defendant either as the owner or a person acting on behalf of the owner to collect the rent in respect of the premises. Thereby he further admits that the plaintiff has ownership title to the premises, and the defendant has no right to occupy the premises other than in the capacity as the tenant of the defendant. In such circumstances, it was for the plaintiff to establish his claim regarding the leasehold right in the suit premises.

7. Undisputedly in the present case, the respondents have not been able to place on record any document in support of their claim that they are occupying the respective premises as the

lessees nor they have been able to produce any rent receipt. Indeed, it was the case of the respondents themselves that considering the friendly relationship between the husband of the petitioner no.1 and the respondents, they had not insisted for issuance of rent receipt by the husband of the petitioner no.1. The respondents however, are totally silent about the period after the death of the husband of the petitioner no.1, as

regards the rent receipts during such period. It is not the case of the respondents that after the death of the husband of the petitioner no.1, they did not insist for issuance of the rent receipt by the petitioners. At the same time, they have not produced any such rent receipt nor they have produced any document in the form of money order acknowledgement or even any other statement of account from the bank for having deposited any amount towards rent to the petitioners. Neither they have produced any oral evidence nor any witness who might have seen any payment of rent by any of the respondents either to the husband of the petitioner no.1 or to the petitioners or any one of them at any point of time. In other words, there is absolutely no evidence produced by the

respondents in support of their claim regarding leasehold rights in relation to the suit premises. Consequently, the courts below were in fact left with no alternative than to arrive at the conclusion that the respondents had failed to establish their claim in respect of leasehold right in relation to the suit premises. However, by completely mis-reading the evidence and illegally casting burden upon the petitioners to prove their defence regarding status of the respondents as the

trespassers in the suit premises, have arrived at the findings in favour of the respondents which are as rightly submitted by the learned advocate for the petitioners, not only contrary to the record but also totally perverse and that warrants interference in the impugned judgement by this Court in its writ jurisdiction.

8. Undoubtedly, as regards the point relating to mis-joinder of parties and mis-joinder of cause of action, the impugned judgements itself disclose that the petitioners did raise such point. However, the lower appellate court appears to have ignored the same. The respondents' advocate has justified in contending that unless such points go

to the root of the case and can affect the decision on merits, cannot be allowed to be entertained nor on that count a decree can be interfered in an appeal filed by a party against the decree and for same reason, no interference would be permissible even under writ jurisdiction. However, if such point goes to the root of the case in as much as that it is the case of the respondents themselves that they were the tenants of three different pieces of land having commenced the lease in respect of the land in their

respective possession at three different point of time and each of them having independent right against the petitioners, each of them has separate and independent cause of action in the matter. It was sought to be contended on behalf of the respondents that the cause of action for all the respondents was same as there was an attempt for to obstruct the respondents in their access to the suit premises and therefore, it cannot be said that there was independent cause of action in favour of each of the respondents. The contention is devoid of substance. Even in respect of access to the premises, it was independent cause of action in favour of each of the respondent, as each of the

respondent is claiming access to three different pieces of land in possession of three respondents and each of them has no interest in the piece of land in possession with others. Being so, the petitioners are justified in contending that even on the ground of mis-joinder of cause of action and mis-joinder of the parties such petition ought to have dismissed in the facts and circumstances of the case.

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9. For the reasons stated above, the impugned judgements passed by the Courts below cannot be sustained and are liable to be set aside and the suit to be dismissed.

10. The petition therefore, succeeds. The impugned judgements are hereby quashed and set aside and the suit is dismissed and rule is made absolute in terms of prayer clause 8(b) of the petition with no order as to costs.

(R.M.S.Khandeparkar, J.)

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HIGH COURT, BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.532 OF 1993

Date of Judgment : 1st October, 2004

For Approval

Hon’ble Shri Justice R.M.S.Khandeparkar.

1. To be referred to the Reporters or not ?

2. To be shown to the Reporters of the
   local newspapers or not ?

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